Approval of Logging in Areas Suitable for Marbled Murrelets

Complaint Investigation 040577

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Highway

Licensee operating area near Jordan River (TFL 25)

(Map not to scale)

Enlarged area

The Investigation

In July 2004, the Board received a complaint from Carmanah Forestry Society (the complainant) alleging that the approval of logging near Jordan River will reduce or eliminate marbled murrelet habitat. The logging was approved in an amendment to a forest development plan (FDP) prepared by Western Forest Products (the licensee) for its operations near Jordan River (see map on page 1).

The Board investigated whether the amendment was approved in accordance with the Forest Practices Code of British Columbia Act[1] and its regulations (the Code) and whether approval of the amendment was reasonable. The Board also assessed the appropriateness of the licensee's approach to managing marbled murrelet habitat.

Background

Marbled murrelets (MAMU) are small seabirds that live along the Pacific coast of North America. MAMU have been listed as 'threatened' by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) since 1990 due to declining population trends. MAMU are also on BC's 'red list' of species that are threatened or endangered.

The federal Canadian Wildlife Service compiled current information on MAMU in BC[2]. A Marbled Murrelet Recovery Team published management guidelines for conserving MAMU[3]. A recovery strategy was developed to address the federal Species at Risk Act, but is not yet approved by the federal or provincial governments. Those documents are collectively referred to in this report as the Conservation Assessment. Populations of MAMU appear to be directly related to the availability of suitable old-growth forest near the ocean[4]. These forests provide predator protection, nest sites and access to food.

Old-growth forests are maintained, in part, through the designation of old growth management areas (OGMAs). OGMAs are part of the province's ecosystem approach to managing biodiversity. Ecosystems are managed to provide a range of habitat conditions that, together, are assumed to provide habitat suitable for all native species.

However, that ecosystem approach is not adequate to conserve species whose habitats are particularly susceptible to loss or damage by forest practices. Therefore, government officials can designate threatened and other susceptible species as 'identified wildlife' and conserve such species through the establishment of wildlife habitat areas (WHAs). Resource agencies can then establish wildlife measures to be applied within those WHAs. Current government policy is to limit the impact of WHAs on the timber harvesting land base such that they do not constrain more than one percent of the short term timber supply unless a land use plan specifies otherwise.

In September 1999, the licensee and the Ministry of Environment, Lands and Parks—now the Ministry of Water, Land and Air Protection (MWLAP)—identified and ranked the nesting potential of old-growth stands in the Loss and Tugwell landscape units in the licensees' operating area. Potentially suitable stands were then assessed for nesting attributes by helicopter. In July 2000, the licensee contracted a biologist to ground-survey the better areas to confirm their suitability, assess their use by MAMU and refine the boundaries of those stands. The licensee submitted a 2001-2005 FDP in February 2001, deferring development in potentially suitable stands until the detailed ground surveys had been completed. The biologist submitted a final report[5] in December 2001 identifying about 2,100 hectares of old-growth stands with moderate, good or excellent MAMU nesting habitat potential.

The licensee incorporated about 500 hectares of the moderate, good and excellent habitat into the draft OGMA and WHA plans it was developing. The licensee submitted its OGMA plan to the Ministry of Sustainable Resource Management (MSRM) for review, but identified potential WHA areas independently of MWLAP (the agency responsible for the WHA designation process). MWLAP, unaware of the licensee's WHA plan, concurrently proposed WHAs that incorporated 2,000 of the 2,100 hectares of potential habitat.

In early 2004, the licensee submitted an amendment to the existing FDP proposing nine new cutblocks for logging. Although some proposed cutblocks overlapped the WHAs proposed by MWLAP, the district manager did not place substantial weight on the ministry's initial WHA proposal because it was still in the first stage of a six-stage development process. However, the district manager was not confident that the licensee's OGMA proposal met policy direction for conserving old forests. Also, the district manager found that six of the cutblocks were located in areas rated by the consulting biologist as good (five cutblocks) or excellent (one cutblock) potential habitat. The district manager believed it would be prudent to retain some of those areas to maintain reasonable options for future designation of both WHAs and OGMAs. Therefore, the district manager did not approve the amendment.

In May 2004, the licensee submitted a revised amendment and brought new information forward to the district manager. The revised amendment dropped the previously submitted cutblock that was in excellent potential habitat. MSRM had now reviewed the licensee's OGMA proposal and endorsed it in principle. MWLAP's WHA proposal, now in stage three of the WHA development process, had been reduced to 1,600 hectares to mitigate timber supply impacts and operational conflicts by excluding areas previously approved for development. The district manager found that proposed cutblocks did not overlap with proposed OGMAs and, with one exception, no longer overlapped with the WHAs proposed by MWLAP. Finally, the biologist who completed the ground surveys submitted a letter stating that she did not expect the amendment would impact MAMU habitat. For those reasons, the district manager approved the licensee's revised amendment in May 2004.

Issues Investigated

The complainant asserts the approval was insufficiently supported by biological evidence that the amendment would adequately conserve MAMU. The complainant believes that the district manager simply followed government policy that limits the amount of area available for MAMU conservation, rather than following the recommendations of the Conservation Assessment. The complainant is concerned that approvals that implement flawed policy over sound biology will ultimately lead to the demise of MAMU.

While the complaint is about a specific approval made by a statutory decision maker, it also involves government's and the licensee's general approach for managing MAMU.

The Board has previously examined the effectiveness of government's approach to MAMU conservation in two special reports[6]. The Board found that the Conservation Assessment contains the best current information on the biology, populations, habitat associations and habitat management needs of MAMU in BC. The Board also found that implementation of the one percent policy cap may result in MAMU populations falling far below the levels recommended by the Conservation Assessment. However, the Board recognized that MAMU conservation must balance social and economic considerations, and that elected officials must do that balancing. Finally, the Board recommended that government follow through on its commitment to analyze the one percent policy cap and make adjustments if it is harming identified wildlife species such as MAMU[7].

In light of the Board's previous analysis and recommendations on government's overall approach to MAMU conservation, this investigation focused on whether the district manager executed her responsibilities under the Code appropriately when reviewing and approving the amendment, and whether the licensee is applying sound forest practices in managing for MAMU.

Approval of the FDP Amendment

An FDP or amendment must meet a two-part test before a district manager can approve it. First, a district manager can only approve an FDP that was prepared in accordance with the Code's requirements (section 41(3)). In this case, there was no requirement to provide any specific information related to MAMU management. Nevertheless, the licensee did include such information, exceeding the Code's specific content requirements. Therefore, the amendment was prepared in accordance with the Code's requirements with regard to MAMU management.

The second test for approval is the district manger had to be satisfied that the amendment adequately managed and conserved the forest resources in the FDP area (section 41(1)(b)). MAMU habitat is a forest resource in the area of the FDP.

Since the impact that proposed logging and road building will have on resource values such as MAMU is uncertain, district managers typically consider risk in making the approval decision. The Board's view is that, under section 41(1)(b), a statutory decision maker must weigh all relevant information to determine relevance and importance. The district manager's caution and deliberation before being satisfied should match the importance of each forest resource and the potential risk created by the proposed forest practices. In the Board's view, if a decision involves resources that are managed by other agencies, a district manager should give careful consideration to the recommendations of such agencies.

In making a discretionary decision, the decision maker must make up his or her mind independently. Decision makers should consider government policies but must not mechanically follow them. Ultimately, whether or not to approve an FDP is the district manager's decision to make. When the Board looks at such decisions, it considers whether the decision falls within a range of reasonable alternatives. If so, the Board accepts the decision as valid.

In this case, the district manager provided a detailed rationale outlining considerations in her decision to approve the amendment. The rationale referenced both the Conservation Assessment and a policy letter[8] clarifying that government had not adopted the recommendations of the Conservation Assessment. The policy letter stated that, until such adoption occurred, decision makers were to continue to ensure that WHAs did not constrain more than one percent of the mature timber harvesting land base. The district manager's rationale indicates that she considered but did not blindly follow that policy.

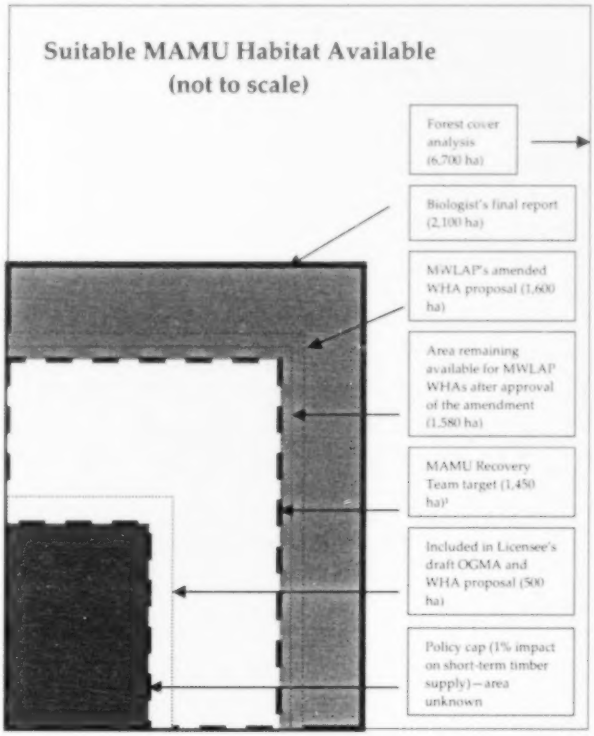
While the district manager's consideration of policy was appropriate, the rationale was unclear about how the potential conflict between the policy cap and the habitat conservation recommendations in the Conservation Assessment was weighed. The district manager subsequently explained that her approach was to assess whether approval of the amendment would unduly constrain future management options for MAMU habitat conservation. That approach included assessing the amendment against the Conservation Assessment and the WHAs proposed by MWLAP.

While the district manager was not constrained by the recommendations of the Conservation Assessment, it provided a means of assessing the potential impact of the amendment on future management options. The Conservation Assessment recognizes that social and economic considerations may not support maintaining all suitable habitat. For the conservation region that includes the licensee's Jordan River operation, it recommends a maximum allowable decline of 31 percent of MAMU habitat over the next 30 years, achievable by maintaining at least 69 percent of the remaining 'suitable habitat'[9].

The target is an average that applies to the entire West–North Vancouver Island conservation region, which includes the licensee's Jordan River operations. The target allows for variations within individual landscape units and watersheds[10], and a specific

target has not yet been determined for the licensee's operating area. Since it can be averaged over the entire west coast, the target only provides a general sense of the potential impact of the amendment on future management options.

Based on the licensee's and MWLAP's analysis of forest cover data, Ministry of Forests (MOF) staff calculated that approval of the amendment would leave much more suitable habitat over the licensee's operating area than recommended by the Conservation Assessment. Forest cover data shows 6,700 hectares of suitable habitat in the landscape units where the licensee operates. The amendment permits logging of about 135 hectares of areas identified by the consulting biologist as good MAMU habitat, leaving 97 percent of the 6,700 hectares of potentially suitable habitat identified from forest cover data unlogged. However, the Board notes that the forest cover data overestimates suitable habitat by including slivers and small fragmented areas that might attract predators, allow windthrow or adversely affect canopy microclimates[11] . The forest cover analysis provided only a rough assessment of potential habitat, later refined through subsequent helicopter and ground assessments.


Suitable MAMU Habitat Available
(not to scale)
Forest cover analysis (6,700 ha)
Biologist's final report (2,100 ha)
MWLAP's amended WHA proposal (1,600 ha)
Area remaining available for MWLAP WHAs after approval of the amendment (1,580 ha)
MAMU Recovery Team target (1,450 ha)[1]
Included in Licensee's draft OGMA and WHA proposal (500 ha)
Policy cap (1% impact on short-term timber supply)—area unknown

[1]Assuming that the Recovery Team target for the West-North Vancouver Island conservation region applies uniformly to the licensee's operating area (69% of the 2,100 hectares of suitable habitat identified in the biologist's final report)

After completing ground assessments, the biologist identified far less suitable habitat than that suggested by forest cover data—just 2,100 hectares of medium, good and excellent habitat in unfragmented polygons. Some of that area will be fragmented by pending development that had previously been approved. MWLAP's most recently proposed WHAs capture all of the unfragmented, suitable habitat remaining—1,600 hectares. Therefore, any harvesting within those proposed WHAs would have a disproportionately greater effect on future management options than suggested by the analysis of forest cover data.

The district manager did consider the proposed WHAs, noting that a 15 to 20 hectare portion of one of the proposed cutblocks overlapped with the most recent WHAs proposed by MWLAP. She noted that it reduced a proposed WHA by less than 10 percent, and the total area of WHAs proposed in the area of the FDP by less than one percent. The district manager also considered the biologist's opinion that the amendment would not impact MAMU because OGMAs, WHAs, parks and inoperable gullies and terrain would provide a diversity of nesting habitat areas across the landscape. Therefore, she was satisfied that harvesting that cutblock would not unduly constrain the options for managing MAMU habitat, including options for establishing WHAs.

While the proportion of the proposed WHAs affected is small, approving the cutblock permits the fragmentation of one of the remaining WHA options identified by MWLAP. The approval rationale does not address the absence of alternative WHA options. However, the Board calculates that the approval would leave more than 69 percent of the 2,100 hectares of suitable habitat[12] unlogged, which is in line with the Conservation Assessment recommendations. This suggests that the approval of the amendment would not unduly constrain future management options, consistent with the district manager's rationale. On balance, the district manager's conclusion that approval of the cutblocks would not unduly constrain future options for MAMU management and conservation was reasonable.

In summary, the district manager appropriately considered relevant information and reasonably concluded that approval of the cutblocks would not unduly constrain future management options for MAMU. Consequently, it was reasonable for the district manager to be satisfied that approval of the amendment would adequately manage and conserve MAMU.

Licensee's Approach to Managing for MAMU

The licensee is managing for MAMU by identifying potential habitat areas, identifying potential OGMAs and WHAs that incorporate MAMU habitat areas, and voluntarily deferring harvesting in those areas while awaiting formal designation[13]. That proactive approach is consistent with a six-step process previously endorsed by the Board[14], giving government time to refine MAMU habitat assessment and to designate OGMAs and WHAs.

Of concern is that the licensee has identified potential WHAs based on strong consideration of operational factors, rather than the needs of MAMU. For example, some of the potential WHAs identified by the licensee consist of narrow strips following creeks. Those will presumably create a high proportion of stand edges that are not conducive to suitable habitat[15].

The licensee decided to identify potential WHAs independently of MWLAP despite the agency's expertise in wildlife management issues, its mandate to coordinate the development of WHAs, and a previous request that the licensee convey information on its MAMU conservation strategy to develop a mutually acceptable strategy. The licensee was

reluctant to consult with MWLAP on WHA proposals since it disagreed with MWLAP on how government's policy direction applies to the licensee's tree farm license. However, the Board's view is that working collaboratively will increase the effectiveness of protection while government resolves policy issues. During a meeting that occurred as part of the investigation, the licensee committed to work with MWLAP to identify areas of agreement that address both conservation and timber supply needs.

In summary, the licensee took a proactive approach to identifying and managing for potential MAMU habitat and can further improve practices by implementing its commitment to work with MWLAP on WHA proposals.

Conclusions

The district manager approved the FDP amendment in accordance with the Code. While the amendment's impact on MAMU populations is unknown, the district manager assessed risk and reasonably concluded that approving the FDP amendment would adequately manage and conserve MAMU.

The licensee took a proactive approach to MAMU management and can further improve practices by working with MWLAP on WHA proposals.

Commentary

Any future harvesting in the remaining 1,600 hectares of suitable habitat will have a cumulative affect on MAMU and further constrain future management options. Therefore, the licensee, MWLAP and the district manager will face increasingly difficult decisions about managing the remaining suitable MAMU habitat. To enable that decision making, government needs to follow through on its commitment to review the impact of its policy cap for WHA areas and make adjustments if the policy is harming identified wildlife (as previously recommended by the Board), and then provide clear guidance on how any policy applies to landscape units.

[1] In January 2004 the *Forest and Range Practices Act* (FRPA) replaced the Forest Practices Code as British Columbia's forest practices legislation. The transitional provisions of FRPA state the Code continues to apply to forest practices carried out under a forest development plan. This continues until there is an approved forest stewardship plan, at which point, the requirements of FRPA apply. Licensees and the B.C. Timber Sales Program may continue to obtain approval of a forest development plan until December 31, 2005. Therefore, although many Code provisions are no longer in general effect at the time of writing, they will be referred to in this report in the present tense.

[2] Burger, A. E., 2002. *Conservation assessment of Marbled Murrelets in British Columbia: A Review of the Biology, Populations, Habitat Associations and Conservation*, Canadian Wildlife Service Technical Series Report No. 387 **[Biological Review]** [online] http://www.sfu.ca/biology/wildberg/bertram/mamurt/PartA.pdf.

[3] Marbled Murrelet Recovery Team, in review, *Marbled Murrelet Conservation Assessment 2002, Part B – Marbled Murrelet Recovery Team Advisory Document on Conservation and Management*, Canadian Wildlife Service, Delta, BC. **[Advisory Document]** [online] http://www.sfu.ca/biology/wildberg/bertram/mamurt/PartB.pdf.

[4] **Advisory Document**, p. 30, 35.

[5] Leigh-Spencer, S., December 2001. *Final Report Marbled Murrelet Nesting Habitat Assessment Jordan River TFL 25.*

[6] *Marbled Murrelet Habitat Management – Considerations for the New Forest and Range Practices Act, Special Report, January 2003* [online] http://www.fpb.gov.bc.ca/special/reports/SR13/SR13.pdf, and *A Lack of Direction: Improving Marbled Murrelet Habitat Conservation under the Forest and Range Practices Act, Special Report, September 2004* [online] http://www.fpb.gov.bc.ca/special/reports/SR21/SR21.pdf.

[7] *A Lack of Direction: Improving Marbled Murrelet Habitat Conservation under the Forest and Range Practices Act, Special Report, September 2004*, p. 11 [online] http://www.fpb.gov.bc.ca/special/reports/SR21/SR21.pdf.

[8] Ministries of Forests, Water, Land and Air Protection and Sustainable Resource Management, 2004. Letter of Clarification entitled 'Clarification and Interim Direction on Marbled Murrelet Conservation in British Columbia', January 30, 2004.

[9] **Advisory Document**, p. 13, 25, 26.

[10] Stevenson, J.D. et al, 2003. *Long-term Risks to Marbled Murrelet (Brachyramphus marmoratus) Populations: Assessing Alternative Forest Management Policies in Coastal British Columbia*, Ministry of Forests Forest Science program, p. 16 **[Technical Report]** [online] http://www.for.gov.bc.ca/hfd/pubs/Docs/Tr/Tr012.htm.

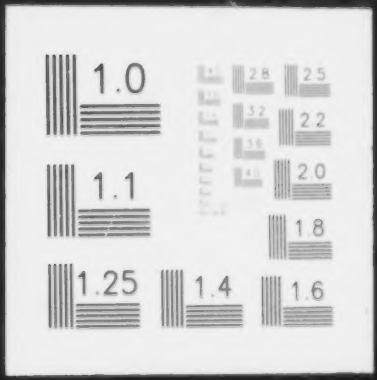
[11] Ministry of Water, Land and Air Protection, 2004. *Accounts and Measures for Managing Identified Wildlife – Accounts V.* 2004, Marbled Murrelet Brachyramphus marmoratus, original prepared by Alan Burger, p. 7, 12 [online] http://wlapwww.gov.bc.ca/wld/identified/documents/Birds/b_marbledmurrelet.pdf.

[12] [(1600 hectares of proposed WHAs) – (20 hectares of approved harvesting in the WHA)]/(2100 hectares of suitable habitat identified by the consultant) = 75% unlogged potentially suitable habitat.

[13] *A Lack of Direction: Improving Marbled Habitat Conservation under the Forest and Range Practices Act, Special Report, September 2004*, p. 9, endnote xxii [online] http://www.fpb.gov.bc.ca/special/reports/SR21/SR21.pdf.

[14] *A Lack of Direction: Improving Marbled Habitat Conservation under the Forest and Range Practices Act, Special Report, September 2004*, p. 9 [online] http://www.fpb.gov.bc.ca/special/reports/SR21/SR21.pdf.

[15] Ministry of Water, Land and Air Protection, 2004. *Accounts and Measures for Managing Identified Wildlife – Accounts V.* 2004, Marbled Murrelet Brachyramphus marmoratus, original prepared by Alan Burger, p. 7, 12 [online] http://wlapwww.gov.bc.ca/wld/identified/documents/Birds/b_marbledmurrelet.pdf.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